International Longshoremen's Association, Local 1242, AFL–CIO *and* Pattison Avenue Warehousing Corp.

International Longshoremen's Association, Local 1566, AFL–CIO *and* Pattison Avenue Warehousing Corp. Cases 4–CD–786–1 and 4–CD–786–2

September 30, 1991

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The charges in this Section 10(k) proceeding were filed on April 4, 1990, by the Employer, Pattison Avenue Warehousing Corp. (PAWC), alleging that the Respondents, International Longshoremen's Association, Local 1242 and International Longshoremen's Association, Local 1566 violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees they represent rather than to the Employer's employees who are represented by International Longshoremen's Association, Local 1332A. The hearing was held November 20 and December 18, 19, and 20, 1990, before Hearing Officer David Berger. The Employer filed a brief, and ILA Locals 1242 and 1566 filed a joint brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Pennsylvania corporation, operates refrigerated warehouses, including a facility at the Holt Terminal in Gloucester, New Jersey. During the calendar year preceding the hearing, the Employer derived gross revenues in excess of $50,000 for goods received directly from outside the State of Pennsylvania. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that ILA Local 1242, ILA Local 1566, and ILA Local 1332A are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Up until February 1990, building 8, the scene of this alleged jurisdictional dispute (also referred to in these proceedings as building 14 or the refrigerated warehouse) and the adjoining building, 8A, were operated as one big barn-like transit shed. The two buildings were separated by a wall, with three cargo doors to allow passage between the two buildings. The facility is located on pier 8 in the Gloucester, New Jersey Marine Terminal. All work in the combined building was performed for Holt Cargo Systems, Inc. (HCS), a stevedore and terminal operator, and was performed pursuant to collective-bargaining agreements with two deep sea locals of the International Longshoremen's Association, AFL–CIO. ILA Local 1242 represented clerks and checkers who received, checked, sorted cargo, and prepared the incidental paperwork. ILA Local 1566 represented ''coopers,'' who repaired damage to the cargo and to the crates and pallets containing the cargo. This work was performed pursuant to the collective-bargaining agreements between those unions and the Philadelphia Marine Trade Association (PMTA), of which HCS is a member. HCS is owned by Thomas Holt.

In December 1988, Holt Hauling and Warehousing Systems, Inc. (also owned by Thomas Holt) sold building 8 to a corporation named 777 Pattison Ave., Inc. After the purchase by 777 Pattison Ave., its sister corporation, PAWC[1] invested approximately $6.2 million to refurbish and convert the facility from a heated transit shed to a refrigerated warehouse to permit refrigerated cargo to be stored in the building. In his role as a consultant, Holt negotiated the ILA Local 1332A collective-bargaining agreement on behalf of PAWC. That contract covered all coopering, clerking, and checking work in its refrigerated warehouse. HCS does not have a collective-bargaining agreement with ILA Local 1332A and that Union is not a member of the group of unions which have collective-bargaining agreements with PMTA.

Conversion of the transit shed to a refrigerated warehouse was completed by the third week of February 1990. After the conversion, employees represented by Locals 1332,[2] 1242, and 1566 were permitted to move the cargo up to, but not beyond, the original divider wall. All further movement was to be carried out by employees represented by ILA Local 1332A pursuant to its ''Refrigerated Warehouse Agreement'' with PAWC, which was not a member of the PMTA. On February 26, trucks delivering equipment to that facility were denied access by HCS employees represented by ILA Locals 1332, 1242, and 1566. That problem was resolved, but the next day, these same employees refused to move or check cargo intended for PAWC

[1] Lorraine Robins owns both 777 Pattison Ave., Inc. and PAWC. Thomas Holt provides consulting services to both corporations.

[2] ILA Local 1332 is chartered as a carloaders union and is distinct from ILA Local 1332A, which was chartered as a warehouse workers union. Members of ILA Local 1332 perform the work of loading and unloading trucks, discharging and loading containers, and transferring freight in and out of storage places.

from the HCS transit shed into the refrigerated warehouse, or from the transit shed onto trucks to be delivered over the road.[3] There were no pickets at the site nor were threats to picket made. According to the testimony of Thomas Holt, ILA Local 1242 Business Agent Jack McCann came onto the pier and the HCS employees stopped working. Holt's testimony indicates that he inferred that McCann instigated the work stoppage. Holt, however, offered no direct evidence that these work stoppages were authorized or ratified by either of the Respondents. Holt did not see or hear McCann give any direction to the people to block work nor did Holt discuss with McCann the fact that some employees represented by ILA Local 1242 were blocking work. Neither Holt nor any representative of PAWC discussed the work stoppage with any official from ILA Locals 1242 or 1566. James Paylor, the president of ILA Local 1566, testified that when his members telephoned him in late February about people represented by ILA Local 1332A working in the building, he told them to resume work, that the problem would be handled through the arbitration procedure, and that no other action should be taken. McCann testified that when he learned that there was a problem at the pier he went to the area and gave his members the same advice.

B. *Work in Dispute*

The disputed work involves the clerking, checking, and coopering work for the Pattison Avenue Warehousing Corp. refrigerated warehouse located at the Holt Marine Terminal in Gloucester City, New Jersey.

C. *Contentions of the Parties*

The Respondents contend that there is no evidence that either of them authorized, instigated, or sanctioned the work stoppages. Therefore, according to the Respondents, there is no evidence before the Board to support a conclusion that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated by either Union. The Respondents also contend that the Board should defer to the voluntary settlement procedures agreed upon by the parties in the PMTA collective-bargaining agreements with ILA Locals 1242 and 1566 that specifically provide that they bind ''related and affiliated companies'' of the employer-members of the PMTA. Thus, the Board should defer to those arbitration proceedings as the means of resolving the dispute. For these reasons, the Respondents contend that the present dispute is not properly before the Board. Should the Board decide the case on the merits, however, the Respondents assert that this is not a jurisdictional dispute over the performance of work in a warehouse because building 8 is not being operated as a bona fide warehouse. It is being used as a subterfuge by which Holt Cargo Systems is violating its collective-bargaining agreements with ILA Locals 1242 and 1566. Finally, the Respondents contend that under the relevant, established criteria for resolving jurisdictional disputes the work of clerking and checking in building 8 should be assigned to ILA Local 1242 and the work of coopering in building 8 should be assigned to Local 1566.

The Employer contends that because there was a work stoppage by employees represented by the Respondents, the Respondents are to be held accountable. Thus, according to the Employer, there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. The Employer further contends that all relevant factors present in this case support an award of the work to employees represented by ILA Local 1332A.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. The Employer contends that the Respondents violated Section 8(b)(4)(D) through the work stoppages.

We find no reasonable cause to believe that either Respondent has committed any action, directly or indirectly, which would violate Section 8(b)(4)(D). The record is absolutely devoid of any communication between the parties on which to base a threat of illegal conduct. Nor is there any showing that the alleged illegal conduct is attributable to either Respondent. After hearing no communication from ILA Local 1566 concerning the work stoppage, the Employer failed to contact any official of ILA Local 1566 to obtain its position on the matter. When ILA Local 1242 Business Agent Jack McCann came to the pier, the Employer failed to communicate with him to ascertain his position on the matter. Thus, the evidence before us is insufficient to warrant an inference that ILA Locals 1242 or 1566 either authorized or ratified the work stoppages. Under these circumstances, we hold that the record evidence does not support the necessary finding that there is reasonable cause to believe that either Respondent violated Section 8(b)(4)(D) of the Act.[4]

[3] This same scenario was repeated on March 6, 1990, according to Thomas Holt.

[4] Cf. *Iron Workers Local 395 (Delta Star)*, 271 NLRB 808 (1984) (without evidence of union involvement in the events, there was no reasonable cause to believe that the Iron Workers Union violated Sec. 8(b)(4)(D) of the Act when workers it represented twice appeared at a jobsite where there was a dispute over the assignment of certain work, thus causing the employer to shut down the job).

Finding no reasonable cause to believe that Section 8(b)(4)(D) has been violated, we shall quash the notice of hearing.

ORDER

The notice of hearing is quashed.